2000 - 2002 REPORT

OF

THE MUNICIPAL COURT PRACTICE

COMMITTEE

Submitted January 15, 2002

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I. PROPOSED RULE AMENDMENTS RECOMMENDED

A. Proposed Amendments to R. 7:6-2 - Pleas, Plea Agreements

On April 24, 2000, Acting Director Richard J. Williams issued a memorandum to all Presiding Judges-Municipal Courts regarding municipal court plea agreements and the implementation of R. 7:6-2. In that memorandum, Judge Williams advised that he had been asked by the Conference of Assignment Judges to elicit the assistance of the Presiding Judges to eliminate the practice of municipal courts accepting pleas without careful adherence to the requirements of R. 7:6-2. He reiterated that the rule requires that the terms and factual basis that support a plea agreement be fully set forth on the record and that any sentence recommendation accepted not circumvent the minimum sentence required by law.

In response to Judge Williams' memorandum, the Municipal Court Practice Committee recommended that R. 7:6-2(d)(5) be amended to make clear that when a plea agreement is reached the terms and factual basis that support the charges be fully set forth on the record pursuant to R. 7:6-2(a)(1). The proposed amendments to R. 7:6-2(d)(5) provide as follows:

7:6-2 Pleas, Plea Agreements

(a) No change.

(b) No change.

(c) No change.

(d) Plea Agreements. Plea agreements may be entered into only pursuant to the Guidelines and accompanying Comment issued by the Supreme Court, both of which are annexed as an Appendix to Part VII, provided, however, that:

(1) the complaint is prosecuted by the municipal prosecutor, the county prosecutor, or the Attorney General; and

(2) the defendant is either represented by counsel or knowingly waives the right to counsel on the record; and

(3) the prosecuting attorney represents to the court that the complaining witness and the victim, if the victim is present at the hearing, have been consulted about the agreement; and

(4) the plea agreement involves a matter within the jurisdiction of the municipal court and does not result in the downgrade or disposition of indictable offenses without the consent of the county prosecutor, which consent shall be noted on the record; and

(5) the sentence recommendations, if any, do not circumvent minimum sentences required by law for the offense. When a plea agreement is reached, its terms and the factual basis that supports **[**it**]** the charge(s) shall be fully set forth on the record pursuant to section(a)(1) of this Rule. If the judge determines that the interest of justice would not be served by accepting the agreement, the judge shall so state, and the defendant shall be informed of the right to withdraw the plea if already entered.

Note: Source-Paragraph (a): R. (1969) 7:4-2(b); paragraph (b): R. (1969) 7:4-2(b); paragraph (c): R. (1969) 3:9-3(f); paragraph (d): R. (1969) 7:4- 8. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (d)(5) revised _____, 2002 to be effective _____, 2002.

B. Proposed Amendments to R. 7:4-5 - Forfeiture

In an Order dated November 1, 2000, the Supreme Court relaxed the court rules to allow additional notice to be given to corporate surety companies in connection with bail forfeitures and judgments in both Superior and municipal court cases. In order to comply with that Order, the Committee recommended that R. 7:4-5 (Forfeiture) be amended to require municipal court administrators and deputy court administrators to serve notice of forfeiture, by ordinary mail, on the defendant and the surety, including any corporate surety company, licensed insurance producer and limited insurance representative whose names appear on the Bail Recognizance. That notice must include a statement that a judgment will be entered as to any outstanding bail, absent a written objection within 45 days of the notice seeking to set aside the forfeiture. Notice to corporate surety companies, licensed insurance producers or limited insurance representatives must be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court, pursuant to R. 1:13-3. When a corporate surety fails to pay a forfeiture or to file a motion to vacate the forfeiture within 45 days of the date of the notice, the court, on motion, shall enter a judgment of default.

A copy of a judgment entered against a corporate surety company must be served by ordinary mail on the corporate surety company, the licensed insurance producer and the limited insurance representative named in the judgment at the address recorded in the Bail Registry maintained by the Clerk of the Superior Court. Additionally, a copy of the judgment must be sent to the Clerk of the Superior Court indicating that the surety has failed to pay or to file an objection. When the surety has paid the forfeited bail, the municipal court administrator or deputy court administrator shall notify the Clerk of the Superior Court of the payment of the judgment so that the corporate surety company, licensed insurance producers and limited insurance representatives may be reinstated in the Bail Registry.

Proposed R. 7:4-5 was amended follows:

7:4-5 Forfeiture

(a) Declaration. Upon breach of [the] a condition of a recognizance, the court may forfeit the bail on its own or the prosecuting attorney's motion. The municipal court administrator or deputy court administrator shall serve notice of forfeiture, by ordinary mail, on the defendant and the surety, including any corporate surety company, licensed insurance producer and limited insurance representative whose names appear on the Bail Recognizance, that a judgment will be entered as to any outstanding bail, absent a written objection within 45 days of the notice seeking to set aside the forfeiture. Notice to any corporate surety company, licensed insurance producer or limited insurance representative shall be sent to the address recorded in the Bail Registry maintained by the Clerk of the Superior Court pursuant to R. 1:13-3. If bail is ordered to be forfeited, the municipal court administrator or deputy court administrator shall forthwith forfeit the bail pursuant to R. 7:4-3(e). Whenever notice of forfeiture is issued, the notice shall provide that failure to pay the bail or to file a timely written objection seeking to set aside the forfeiture will result in the entry of a judgment and removal from the Bail Registry of the names of all of the corporate surety company's licensed insurance producers and limited insurance representatives. The court shall review a timely filed objection on its merits and, in the discretion of the court, for good cause shown, may order a hearing.

(b) Setting Aside. The court may, upon such conditions as it imposes, direct that an order of forfeiture be set aside, if [not] required in the interest of justice.

(c) Enforcement; Remission. If a forfeiture is not set aside, the court shall, on motion, enter a judgment of default, and execution may issue on the judgment. After entry of the judgment, the court may remit the forfeiture in whole or in part in the interest of justice. When a corporate surety fails to pay a forfeiture or to file a motion to vacate the forfeiture within 45 days of the date of the notice sent pursuant to section (a) of this rule, the court, on motion, shall enter a judgment of default.

A copy of a judgment entered against a corporate surety company shall be served by ordinary mail on the corporate surety company, the licensed insurance producer and the limited insurance representative named in the judgment at the address recorded in the Bail Registry maintained by the Clerk of the Superior Court. Pursuant to section (a) of this rule, a copy of the judgment shall be sent to the Clerk of the Superior Court indicating that the surety has failed to pay or to file an objection.

(d) The municipal court administrator or deputy court administrator shall notify the Clerk of the Superior Court of the payment of the judgment so that the corporate surety company, licensed insurance producers and limited insurance representatives may be reinstated in the Bail Registry.

Note: Source-R. (1969) 7:5-1, 3:26-6. Adopted October 6, 1997 to be effective February 1, 1998; amended , 2002 to be effective , 2002 .

C. Proposed Amendments to R. 7:2-1, R. 7:2-2 and R. 7:3-1 - Traffic Warrants

A number of courts and police departments have requested the Committee to permit the issuance of traffic warrants for certain specific serious traffic offenses. Currently, there is no procedure in Part VII of the Court Rules to permit the issuance of a complaint-warrant for traffic offenses. Rather, the rules only provide for the issuance of a complaint-summons. Some courts and police departments have complained that certain serious traffic violators, especially nonresident drivers, ignore traffic summonses issued by police. Therefore, the Committee concludes that the ability to issue a complaint-warrant for selected serious violations, with the attendant posting of bail to better insure a defendant's appearance in court, is desirable. When determining whether to issue a warrant, the court will continue to be guided by the provisions of R. 7:2-2(b) and R. 7:3-1(b), which favor the issuance of a summons, rather than a warrant, unless the court finds that one or more of the enumerated conditions[1] in those rules apply. Once bail is set, pursuant to R. 7:3-1, the defendant would then be released upon payment of that bail. It is also proposed that the standards to be employed in determining whether bail should be set are the same standards currently established for the setting of bail in all other matters cognizable in the municipal courts, pursuant to R. 7:4-1.

In researching this issue, the Committee considered relevant statutory and case law, in conjunction with the rules. Turning first to the statutory review, the Committee recognized that New Jersey is a signatory to the Nonresident Violator Compact (the Compact) N.J.S.A. 39:5F-1 to 30. That Compact provides a means through which party jurisdictions participate in a reciprocal program to allow in-state and foreign motorists to accept a traffic citation for certain violations and proceed on their way without delay. However, the Committee also determined that N.J.S.A. 39:5-25 (Arrest without warrant; detention of offender; summons instead of arrest), which permits warrants to be issued for certain traffic offenses, is not inconsistent with the Compact. Specifically, N.J.S.A. 39:5-25 provides that "any law enforcement officer may, without a warrant, arrest any person violating in his presence any provision of chapter 3 . . . or . . . chapter 4 of . . . Title [39]." That statute further provides that except for violations of N.J.S.A. 39:4-50 (DWI), ". . . the person shall be detained in the police station or municipal court until the arresting

[1] R. 7:2-2(b) (Determination Whether to Issue a Summons or Warrant) currently provides, in part, ". . . If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator . . . finds that: (1) the defendant has failed to respond to a summons; or (2) there is reason to believe that the defendant is dangerous to himself or herself, to others, or to property; or (3) there is one or more outstanding arrest warrants for the defendant; or (4) the address of the defendant is not known and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or (5) there is reason to believe that the defendant will not appear in response to a summons." R. 7:3-1 (Procedure After Arrest) provides that a law enforcement officer making an arrest without a warrant should prepare a complaint-summons unless one or more of six conditions exist. Five of those conditions are the same are the same as the conditions contained in R. 7:2-2(b) quoted above plus a sixth condition that "the defendant cannot be satisfactorily identified." See R. 7:3-1(b)(1)(e). As a result, the addition of that sixth condition to R. 7:2-2(b) is being proposed along with the deletion of those six conditions from R. 7:3-1 (b)(1) to improve internal consistency and avoid redundancy within the rules. Although those conditions are being deleted from R. 7:3-1(b)(1), that rule will now refer to R. 7:2-2(b). See paragraphs D and E on pages 6 & 7of this Report.

officer makes a complaint and a warrant issues." With regard to DWI violations, the arresting officer may detain the person arrested for a reasonable time, not to exceed 24 hours, to obtain a warrant for the offender's further detention pending the availability of a judge.[2] In non-DWI cases, the officer may arrest offenders who commit violations in the officer's presence. They may detain those offenders until the filing of a complaint and the issuance of a warrant by the court (which would include setting bail). Finally, N.J.S.A. 39:5-25 provides that instead of arresting an offender the law enforcement officer may serve a summons-complaint and permit offenders to proceed on their way without further delay, consistent with the purpose of the Compact.

In analyzing the case law related to traffic warrants, the Committee considered the dicta in State v. Pierce, 136 N.J. 184 (1994).[3] In Pierce, the New Jersey Supreme Court noted that N.J.S.A. 39:5-25 authorizes both issuance of a summons and arrest for the violations to which it applies, yet fails to contain provisions that specify whether arrest or a summons is appropriate. Literally, as noted above, this statute permits police to arrest any person who violates, in the officer's presence, any provision of Chapters 3 and 4 of Title 39 (traffic violations), no matter how trivial the traffic offense. The Court noted that an arrest for a minor traffic violation may raise issues of constitutional dimension under the Fourth and Fourteenth Amendments.

Therefore, in light of the preceding, the Committee recommends that traffic warrants be authorized only for three enumerated serious traffic offenses: (1) N.J.S.A. 39:3-10.13 (Driving a commercial vehicle while intoxicated.); (2) N.J.S.A. 39:4-50(a) (Driving while intoxicated); and (3) N.J.S.A. 12:7-46 (Operating or permitting another to operate vessel while intoxicated).

D. Proposed Separate and Additional Amendments to R. 7:2–2

In its review of the language of R. 7:2-2, the Committee determined that the rule, as it is currently written, permits a judicial officer to issue process if appears that probable cause exists "from the complaint, affidavit or deposition." The Committee felt that the word "deposition" was not reflective of the actual practice in municipal courts and, therefore, recommended that the word be changed to "testimony." In addition, the Committee recommends the addition of one other factor, "the defendant cannot be satisfactorily identified," to be considered in determining whether to issue a summons or warrant. This would

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[2] The importance of detaining DWI offenders is underscored by the recent enactment of N.J.S.A. 39:4-50.22 to 50.23, which requires the arresting law enforcement agency to impound the vehicle of an intoxicated driver and provide anyone who appears at the police station on behalf of defendants with notice of their potential civil and criminal liability for permitting the arrested intoxicated driver to operate a motor vehicle.

[3] See also, Atwater v. City of Lago Vista, 532 U.S. 318, 121 S.Ct. 1536, 149 L.Ed. 2d 549 (2001) In Atwater, a divided U.S. Supreme Court ruled that a police officer in Texas acted properly in arresting a woman for the minor offense of failing to wear a seat belt. Justice Souter, for the majority, wrote that "If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender." See, 532 U.S. at ___,121 S. Ct. at 1557, 149 L.Ed. 2d at 577.

conform the factors in R. 7:3-1(b)(1) to those contained in R. 7:2-2(b).

E. Proposed Separate and Additional Amendment to R. 7:3-1(b)(2)

The Committee also noted that the language of R. 7:3-1(b)(2) is unclear as to who can dismiss a case if no probable cause is found to issue process. To avoid any ambiguity, the Committee recommended that the language of R. 7:3-1(b)(2) be revised to clarify that if no probable cause is found to issue process, only the judge is authorized to dismiss the case.

To avoid redundancy, the Committee recommended that the enumerated factors that determine when an arrest warrant should be issued in R. 7:3-1(b)(1) be eliminated. Instead, R. 7:3-1(b)(1) should refer to the factors found in R. 7:2-2(b).

The amendments to R. 7:2-1, R. 7:2-2, and R. 7:3-1 (both those related to traffic warrants and those that are separate and additional) provide as follows:

7:2–1. Contents of Complaint, Arrest Warrant and Summons

(a) Non-Traffic Offenses.

[(a)] (1) Complaint: General. The complaint shall be a written statement of the essential facts constituting the offense charged made on a form approved by the Administrative Director of the Courts. Except as otherwise provided by paragraphs (b) (Traffic Offenses), (c) ([p]Penalty [e]Enforcement [p]Proceedings), and (d) ([s]Special [f]Form of [c]Complaint and [s]Summons), all complaints shall be by certification or on oath before a judge or other person so authorized by N.J.S.A. 2B:12–21. The municipal court administrator or deputy court administrator shall accept for filing every complaint made by any person.

[(b)] (2) Summons: General. The summons shall be on a Complaint–Summons form (CDR–1) or other form prescribed by the Administrative Director of the Courts and signed by the officer issuing it. The summons shall be directed to the defendant named in the complaint, shall require defendant's appearance at a stated time and place before the court in which the complaint is made, and shall inform defendant that an arrest warrant may be issued for a failure to appear.

[(c)] (3) Arrest Warrant: General. The arrest warrant shall be made on a Complaint–Warrant form (CDR–2) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge, or when authorized by the judge, by the municipal court administrator or deputy court administrator. The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it and shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing a warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.

[(d)] (b) Traffic Offenses.

(1) Form of Complaint and Process. The Administrative Director of the Courts shall prescribe the form of Uniform Traffic Ticket (UTT) to serve as the complaint, summons or other process to be used for all parking and other traffic offenses. On a complaint and summons for a parking or other non-moving traffic offense, the defendant need not be named. It shall be sufficient to set forth the license plate number of the vehicle, and its owner or operator shall be charged with the violation.

(2) Issuance. The complaint may be made and signed by any person, but the summons shall be signed and issued only by a law enforcement officer or the judge, municipal court administrator or deputy court administrator of the court having territorial jurisdiction.

(3) Records and Reports. Each court shall be responsible for all Uniform Traffic Tickets printed and distributed to law enforcement officers or others in its territorial jurisdiction, for the proper disposition of Uniform Traffic Tickets, and for the preparation of such records and reports as the Administrative

Director of the Courts prescribes. The provisions of this subparagraph shall apply to the Director of the Division of Motor Vehicles, the Superintendent of State Police in the Department of Law and Public Safety, and to the responsible official of any other agency authorized by the Administrative Director of the Courts to print and distribute the Uniform Traffic Ticket to its law enforcement personnel.

(4) Complaint-Traffic Warrant. An arrest warrant shall be made on a Complaint–Traffic Warrant form (UTT) or other form prescribed by the Administrative Director of the Courts and shall be signed by the judge, or when authorized by the judge, by the municipal court administrator or deputy court administrator. A Complaint-Traffic Warrant may be used only for violations of N.J.S.A. 39:3-10.13, 39:4-50(a) and N.J.S.A. 12:7-46, when one or more of the factors in R. 7:2-2(b) applies The warrant shall contain the defendant's name or, if unknown, any name or description that identifies the defendant with reasonable certainty. It shall be directed to any officer authorized to execute it and shall order that the defendant be arrested and brought before the court issuing the warrant. The judicial officer issuing the warrant may specify therein the amount and conditions of bail, consistent with R. 7:4, required for defendant's release.

(c) Penalty Enforcement Proceedings. Unless a special form of complaint and summons is prescribed by the Administrative Director of the Courts for use in the municipal courts, the complaint and summons in a penalty enforcement proceeding shall conform to the form of civil complaint and summons prescribed by Part IV of the Rules of Court or other form approved by the Administrative Director of the Courts.

(d) Special Form of Complaint and Summons. In the event the Administrative Director of the Courts prescribes a special form of complaint and summons for any action or class or classes of actions, that form shall be used in the prescribed manner in place of any other form of complaint and process prescribed by this rule.

Note: Source–Paragraph (a): R. (1969) 7:2, 7:3–1, 3:2–1; paragraph (b): R. (1969) 7:2, 7:3–1, 7:6–1, 3:2–2; paragraph (c): R. (1969) 7:2, 7:3–1, 7:6–1, 3:2–3; paragraph (d): R. (1969) 7:6–1; paragraph (e): R. (1969) 4:70–3(a); paragraph (f): new. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (a), (b) and (c) amended , 2002 to be effective , 2002.

7:2–2. Issuance of Arrest Warrant or Summons

(a) Authorization for Process.

(1) Citizen Complaint. An arrest warrant or a summons on a complaint charging any offense made by a private citizen may be issued only by a judge, or if authorized by the judge, by a municipal court administrator or deputy court administrator of a court with jurisdiction in the municipality where the offense is alleged to have been committed. The arrest warrant or summons may be issued only if it appears to the judicial officer from the complaint, affidavit or **[**deposition**]** testimony that there is probable cause to believe that an offense was committed and the defendant has committed it. The judicial officer's finding of probable cause shall be noted on the face of the summons or warrant. If, however, the municipal court administrator or deputy court administrator finds no probable cause exists to issue an arrest warrant or summons, that finding shall be reviewed by the judge. A judge finding no probable cause shall dismiss the complaint.

(2) Law Enforcement Officer Complaint. A summons on a complaint made by a law enforcement officer charging any offense may be issued by a law enforcement officer without a finding by a judicial officer of probable cause for issuance.

(b) Determination Whether to Issue a Summons or Warrant. A summons rather than an arrest warrant shall issue if the defendant is a corporation, partnership or unincorporated association. If the defendant is an individual, a summons rather than an arrest warrant shall issue unless the judge or duly authorized municipal court administrator or deputy court administrator finds that:

(1) the defendant has failed to respond to a summons; or

(2) there is reason to believe that the defendant is dangerous to himself or herself, to others, or to property; or

(3) there is one or more outstanding arrest warrants for the defendant; or

(4) the address of the defendant is not known, and an arrest warrant is necessary to subject the defendant to the jurisdiction of the court; or

(5) the defendant cannot be satisfactorily identified; or

(6) there is reason to believe that the defendant will not appear in response to a summons.

(c) Failure to Appear After Summons. If a defendant who has been served with a summons fails to appear on the return date, an arrest warrant may issue pursuant to law and Rule 7:8–9 (Procedures on Failure to Appear). If a corporation, partnership or unincorporated association has been served with a summons and has failed to appear on the return date, the court shall proceed as if the corporation had

appeared and entered a plea of not guilty.

(d) Additional Arrest Warrants or Summonses. More than one arrest warrant or summons may issue on the same complaint.

(e) Identification Procedures. If a summons has been issued or an arrest warrant executed on a complaint charging either the offense of shoplifting or prostitution or on a complaint charging any non-indictable offense where the identity of the person charged is in question, the defendant shall submit to the identification procedures prescribed by N.J.S.A. 53:1–15. Upon the defendant's refusal to submit to any required identification procedures, the court may issue an arrest warrant.

Note: Source—R. (1969) 7:2, 7:3–1, 3:3–1. Adopted October 6, 1997 to be effective February 1, 1998; paragraphs (b) and (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (a)(1) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(1) and (b) amended _____, 2002 to be effective _____, 2002.

7:3–1. Procedure After Arrest

(a) First Appearance; Time. Following the filing of a complaint and service of process upon the defendant, the defendant shall be brought, without unnecessary delay, before the court for a first appearance. If the defendant remains in custody, the first appearance shall be conducted within 72 hours after arrest by a judge with authority to set bail for the offenses charged in the complaint. If the defendant's bail was not set when the arrest warrant on a complaint was issued, bail or other conditions of release shall be set without unnecessary delay, but in no event later than 12 hours after arrest.

(b) Arrest Without Warrant.

(1) Preparation of a Complaint and Summons or Warrant. A law enforcement officer making an arrest without a warrant shall take the defendant to the police station where a complaint shall be immediately prepared. The complaint shall be prepared on a complaint-summons form (CDR-1) or Uniform Traffic Ticket (UTT) unless the law enforcement officer determines that[:

(a) the defendant has failed to respond to a summons; or

(b) there is reason to believe that the defendant is dangerous to himself or herself, to others or to property; or

(c) there is one or more outstanding arrest warrants for the defendant; or

(d) the prosecution of the offense or offenses for which the defendant is arrested or prosecution of any other offense or offenses would be jeopardized by the immediate release of the defendant; or

(e) the defendant cannot be satisfactorily identified; or

(f) there is reason to believe the defendant will not appear in response to a summons.]

one or more of the factors in R. 7:2-2(b) apply. Upon such determination the law enforcement officer shall prepare a complaint-warrant form (CDR–2) or a Complaint-Traffic Warrant (UTT).

(2) Probable Cause; Issuance of Process; Bail. If a complaint-warrant form (CDR–2) or a Complaint-Traffic Warrant (UTT) is prepared, the law enforcement officer shall, without unnecessary delay, but in no event later than 12 hours after arrest, present the matter to a judge, or in the absence of a judge, municipal court administrator or deputy court administrator who has been granted authority to set bail for the offense charged. The judicial officer shall determine whether there is probable cause to believe that the defendant has committed an offense. If probable cause is found, a summons or warrant may issue, but if the judicial officer determines that the defendant will appear in response to a summons, a summons

shall be issued consistent with the standard prescribed by R. 7:2–2(b). If a warrant is issued, bail shall be set without unnecessary delay, but in no event later than 12 hours after arrest. The finding of probable cause shall be noted on the face of the summons or warrant. If no probable cause is found, no process shall issue and the complaint shall be dismissed by the judge.

(3) Summons. If a complaint-summons form (CDR–1) or Uniform Traffic Ticket (UTT) has been prepared, or if a judicial officer has determined that a summons shall issue, the summons shall be served and the defendant shall be released after completion of post-arrest identification procedures required by law and pursuant to R. 7:2–2(e).

Note: Source–R. (1969) 7:2, 7:3–1, 3:4–1. Adopted October 6, 1997 to be effective February 1, 1998; paragraph (b) amended _____, 2002 to be effective _____, 2002.

D. Proposed Amendment to R. 7:7-7 - Discovery and Inspection

The Municipal Court Services Division of the Administrative Office of the Courts received a letter from the Hon. Lawrence M. Lawson, A.J.S.C., dated April 13, 2000, in which he advised that there was an inconsistency with R. 7:7-7 (Discovery and Inspection) and R. 3:6-7 (Secrecy of Proceedings). It appears that a literal reading of R. 7:7-7(b)(3) would permit defendants to make application to municipal court judges to order grand jury clerks to make transcripts available when such a request is denied by the prosecutor. Judge Lawson pointed out that only Assignment Judges have jurisdiction to rule on requests for grand jury transcripts. He advised that the current rule has the potential to create problems since a defendant who is denied a request for a grand jury transcript by the prosecuting attorney, would apply to the municipal court for them. As a result, the grand jury clerk would likely be inundated with municipal court orders for transcripts, each of which would require a separate ruling by an Assignment Judge.

In response to Judge Lawson's letter, the Committee amended R. 7:7-7 to make clear that under Part VII of the Rules, if a grand jury matter is subsequently downgraded and the transcript is included in the downgraded file, it is discoverable only if it is part of the municipal prosecutor's file.

The proposed amendments to R. 7:7-7 provide as follows:

7:7-7 Discovery and Inspection

(a) No change.

(b) Discovery by Defendant. In all cases involving a consequence of magnitude or when ordered by the court, the defendant, on written notice to the municipal prosecutor or private prosecutor, shall be allowed to inspect, copy, and photograph or to be provided with copies of any relevant:

(1) books, tangible objects, papers or documents obtained from or belonging to the defendant;

(2) records of statements or confessions, signed or unsigned, by the defendant or copies thereof, and a summary of any admissions or declarations against penal interest made by the defendant that are known to the prosecution but not recorded;

(3) grand jury proceedings recorded pursuant to R. 3:6-6 that are in the possession of the municipal or private prosecutor;

(4) results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the matter or copies of these results or reports, that are within the possession, custody or control of the prosecuting attorney;

(5) reports or records of defendant's prior convictions;

(6) books, originals or copies of papers and documents, or tangible objects, buildings or places that are within the possession, custody or control of the government;

(7) names and addresses of any persons whom the prosecuting attorney knows to have relevant evidence or information, including a designation by the prosecuting attorney as to which of those persons the prosecuting attorney may call as witnesses;

(8) record of statements, signed or unsigned, by the persons described by subsection (7) of this rule or by co-defendants within the possession, custody or control of the prosecuting attorney, and any relevant record of prior conviction of those persons;

(9) police reports that are within the possession, custody or control of the prosecuting attorney;

(10) warrants, that have been completely executed, and any papers accompanying them, as described by R. 7:5-1(a);

(11) the names and addresses of each person whom the prosecuting attorney expects to call to trial as an expert witness, the expert's qualifications, the subject matter on which the expert is expected to testify,

a copy of the report, if any, of the expert witness, or if no report was prepared, a statement of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. If this information is requested and not furnished, the expert witness may, upon application by the defendant, be barred from testifying at trial.

(c) No change.

(d) No change.

(e) No change.

(f) No change.

(g) No change.

Note: Source--Paragraph (a): new; paragraph (b): R. (1969) 7:4-2(h), 3:13- 3(c); paragraph (c): R. (1969) 7:4-2(h), 3:13-3(d); paragraph (d): R. (1969) 7:4-2(h), 3:13-3(e); paragraph (e): R. (1969) 7:4-2(h), 3:13-3(f); paragraph (f) new; paragraph (g): R. (1969) 7:4-2(h), 3:13-3(g). Adopted October 6, 1997 to be effective February 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (b) amended _____, 2002 to be effective _____, 2002.

II. PROPOSED RULE AMENDMENTS CONSIDERED AND REJECTED

A. Proposed Rule Amendment to R. 7:8-7(b) - Appearance for Prosecution

The Committee considered a revision to R. 7:8-7(b) (Appearance for Prosecution) that would require municipal prosecutors to represent the government in all cases before the court. The draft rule tracked the original language that had been submitted to the Supreme Court in 1998 as part of the Comprehensive Revision of Part VII of the Rules Governing the Courts of New Jersey. Because the Supreme Court was in the process of deciding State v. Clark, 162 N.J. 201 (2000), a case which would directly affect the practice of municipal prosecutors, the Committee rejected recommending the rule to the Court for consideration.

B. Proposed Rule Amendment to R. 7:13-1 - Appeals

The Criminal Practice Committee advised that it was amending R. 3:23-2 (Appeal; How Taken; Time) to reflect the holding in State v. Cerefice, 335 N.J.Super. 374 (App. Div. 2000). Cerefice held that when the decision of a Law Division Judge, sitting as a municipal court judge, is appealed, it must be appealed to the Appellate Division. The Criminal Practice Committee suggested that the Municipal Court Practice Committee might wish to change its comparable rule, R. 7:13-1, to reflect Cerefice. The Committee decided that because R. 7:13-1, as written, currently refers to R. 3:23, an amendment to the rule was unnecessary.

III. PREVIOUSLY APPROVED RECOMMENDATIONS

A. Revision of the Statewide Violations Bureau Schedule

During the 2000-2002 term, the Committee periodically presented proposed amendments to the Supreme Court to update the Statewide Violations Bureau Schedule. That Schedule is a listing of offenses and corresponding fines in a fixed amount that may be paid directly to the municipal court without the necessity of a court appearance. These amendments included: (1) the addition of a number of the Division of Fish and Wildlife regulations, including deer hunting violations; (2) "housekeeping" changes to the Division of Fish and Wildlife regulations, to comply with federal regulatory changes; (3) changes to the New Jersey Turnpike sections of the Schedule to reflect the increase in toll amounts; (4) a change in the fine amount for violations of N.J.S.A. 39:3-9a (Failure to notify change in name) and N.J.S.A. 39:3-9a (Failure to endorse license) to reflect the statutory increase; (5) a correction to add two statutes, N.J.S.A. 39:3-77 and N.J.S.A. 39:4-207.9, which had been inadvertently dropped from the Schedule; and (6) the addition of the New Jersey Turnpike "E-Z Pass" regulations.

These recommendations were previously approved by the Court during the 2000-2002 Committee term and are reflected in the revised Schedule now in effect.

IV. MATTERS HELD FOR CONSIDERATION

A. Proposed Amendment to R. 7:7-7(a) - Discovery and Inspection (Police Discovery Coordinators)

During the 2000-2002 term, the Committee received a number of complaints from municipal courts regarding backlogs that were created because some municipal prosecutors failed to provide discovery in a timely manner. One proposed solution was to amend R. 7:7-7(a) to provide that the municipal prosecutors or their designated "police discovery coordinators" should provide requested discovery items. Under this proposal, the county prosecutor would have the option of designating a police officer to respond to all discovery requests under the supervision of the prosecutor's office instead of placing the entire burden on the municipal prosecutor who may work on a part-time basis. The establishment of a police discovery coordinator system may serve to expedite the case flow process. However, since a new political administration has taken office there may be a change in prosecutorial appointments and policy. Consequently, the Committee concluded that this item should be held for consideration.

B. Proposed Amendment to R. 7:2-1(c) - Issuance of Arrest Warrants by Telephone

In a memorandum dated August 15, 2001 from Acting Director Richard J. Williams to the Assignment Judges, it was reiterated that the Rules of Court do not permit arrest warrants to be issued over the telephone. However, the Conference of Assignment Judges requested that the Criminal Practice Committee and the Municipal Court Practice Committee review their respective arrest rules to consider whether they should be amended to permit a judicial officer to issue an arrest warrant telephonically. The Committee has designated a subcommittee to work with a Criminal Practice subcommittee to review any proposed rule changes. The subcommittee will consider this issue and report to the full Committee during the upcoming term.

C. Proposed Amendment to Part VII of the Rules Permitting Oral Issuance of Warrants and Orders

The Committee was of the opinion that Part VII of the Rules should set out a procedure to permit judges to issue orders and warrants orally. It would require the court to memorialize the oral issuance of a warrant through a probable cause affidavit, contemporaneous notes, a tape recording, or facts set forth on the face of the complaint. The Committee continues to study this matter.

V. NON-RULE RECOMMENDATION - HELD FOR CONSIDERATION

A. Recommendation that Legislative Clarification be Sought for N.J.S.A. 2B:12-24 (Imposition of Court Costs in Dismissed Cases) and N.J.S.A. 22A:3-4 (Fees for Criminal Proceedings)

During the 2000-2002 term, the Committee received reports that confusion exists regarding the interpretation of two statutes: N.J.S.A. 2B:12-24 (Imposition of Court Costs in Dismissed Cases) and N.J.S.A. 22A:3-4 (Fees for Criminal Proceedings).

N.J.S.A. 2B:12-24 provides: "In cases where the judge of a municipal court dismisses the complaint or acquits the defendant and finds that the charge was false and not made in good faith, the judge may order that the complaining witness pay the costs of court established by law." Some courts have interpreted the statute to mean that in all dismissed cases the court may charge the complaining witness court costs.

The relevant portion of N.J.S.A. 22A:3-4 provides: "The fees provided in the following schedule, and no other charges whatsoever, shall be allowed for court costs in any proceedings of a criminal nature in the municipal courts . . . . For violations of Title 39 of the Revised Statutes, or of traffic ordinances, at the discretion of the court, up to but not exceeding $30.00. For all other cases, at the discretion of the court, up to but not exceeding $30.00." A number of courts have construed the statute as being applicable only in criminal and traffic cases. Consequently, in non-criminal and non-traffic cases, such as ordinance violations and civil penalty enforcement actions, courts have charged court costs in excess of $30.00.

The Committee feels that it is necessary to clarify the legislative intent of these statutes and is, therefore, continuing to study these matters.

VI. MISCELLANEOUS MATTERS

A. Amendments to R. 7:2-3 - Arrest Warrant: Execution and Service; Return, New R. 7:2-4 - Summons: Execution and Service; Return, and Amendments to R. 7:2-5 - Defective Warrant or Summons; Amendment

During the 2000-2002 term, the Committee was advised that confusion exists among many municipal courts about whether a Complaint-Summons served by mail constitutes effective service. Currently, R. 7:2-3(b)(1) provides that a Complaint-Summons may be served on a defendant by mail in accordance with R. 4:4-4. If a Complaint-Summons is served on a defendant by ordinary mail and the defendant does not respond, the court cannot issue a warrant or a failure to appear notice (FTA) for that defendant because the court lacks *in personam* jurisdiction. The Committee was concerned that a defendant could avoid *in personam* jurisdiction by simply failing to respond to a mailed Complaint-Summons. Committee members reported that some courts issue warrants or forward FTA notices to defendants, who fail to respond to mailed Complaint-Summonses, where the summonses are not returned as undeliverable. Other courts send a second Complaint-Summons to defendants by certified mail. In short, there is currently no standard practice regarding service of process by mail.

In order to address this problem, the Committee proposed the creation of a new Rule 7:2-4 and the modification of R. 7:2-3. The contents of R. 7:2-4 is retained in its entirety and renumbered as R. 7:2-5.

The proposed amendments to R. 7:2-3 were made to limit the scope of the rule to the: (1) execution and service and (2) return of arrest warrants. Only sections (a) (1), (2) & (3) of R. 7:2-3 would be retained in proposed R. 7:2-3. New procedures for the return, execution and service of summonses, currently contained in R. 7:2-3(b), would be set forth in the proposed revisions to R. 7:2-4.

Proposed R. 7:2-4 would permit service of a Complaint-Summons by ordinary mail. If the defendant acknowledges receipt of the summons by either appearing in court or contacting the court orally or in writing, the mailing would have the same effect as personal service. If the defendant fails to respond to the Complaint-Summons, the court may re-serve it, if it is supplied with an updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address.

If service is attempted by ordinary mail and the defendant does not respond to the Complaint-Summons by the return date, the court must re-serve the Complaint-Summons simultaneously by ordinary mail and certified mail with return receipt requested to the defendant's last known mailing address. When the Complaint-Summons is addressed and mailed to the defendant at a place of business or employment with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt reflects the name of the defendant to whom the Complaint-Summons was mailed. The rule would permit process served by ordinary or certified mail with return receipt requested to be

addressed to a post office box.

The rule provides that service by simultaneous mailing is effective service, unless the mail is returned to the court by the postal service marked with the following specific designations: "Not Deliverable As Addressed, Unable to Forward;" "Insufficient Address;" "Moved, Left No Address;" "Attempted - Not Known;" "No Such Street, Number;" "Vacant;" "Illegible;" "No Mail Receptacle;" "Box Closed - No Order;" "Returned for Better Address;" or the court has other reason to believe that service was not effected. If the defendant fails or refuses to claim or to accept delivery of the certified mail with return receipt requested, the simultaneous, ordinary mailing shall also be deemed to constitute effective service.

If the court fails to obtain effective service over the defendant after attempting service by simultaneous mailing, the court shall provide written notice of that fact to the prosecuting attorney and the complaining witness. The case will be eligible for dismissal within 45 days of the receipt of the written notice, unless the prosecuting attorney or the complaining witness can provide the court with a different, updated address for the defendant, along with a postal verification or other proof satisfactory to the court that the defendant receives mail at that address. If the prosecuting attorney or the complaining witness does not respond to the court's written notice within 45 days or if the defendant is not otherwise served, the court may dismiss the case pursuant to R. 7:8-5. Nothing in the proposed rule precludes the prosecuting attorney or other authorized person from attempting service in any lawful manner.

The Municipal Court Practice Committee determined, at its meeting of January 8, 2001, to submit the service of process rule amendments to the Supreme Court for its consideration on an emergent basis, pursuant to Guideline 7 of the Operational Guidelines for Supreme Court Committees. The proposed revisions to R. 7:2-3, R. 7:2-4 and R. 7:2-5 were published for public comment in the New Jersey Law Journal and the New Jersey Lawyer on August 13, 2001. After the public comment period was closed, all comments received were submitted to the Court along with the response of the Committee. The proposed amendments are scheduled for consideration by the Supreme Court at its January 14, 2002 Administrative Conference.

B. Inclusion of N.J.S.A. 2C:33-13.1 (Sale of Cigarettes to Minors) on the Statewide Violations Bureau Schedule

The Attorney General's Office requested that the Committee consider recommending that N.J.S.A. 2C:33-13.1 be placed on the Statewide Violations Bureau Schedule. The Committee declined to make this recommendation because N.J.S.A. 2C:33-13.1 carried enhanced penalties for second time offenders.

VII. CONCLUSION

The members of the Municipal Court Practice Committee appreciate the opportunity to serve the Supreme Court in this capacity.

Respectfully submitted:

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